

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Center, Texas

TYSON FOODS, INC.

Employer

and

Case No. 16-RC-10726

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, CLC, LOCAL 408

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Tyson Foods, Inc., is engaged in the business of poultry processing. The Petitioner, United Food and Commercial Workers International Union, CLC, Local 408, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 51¹ employees consisting of all regular part-time and full-time chicken catchers employed at the Employer's Center, Texas plant. The Petitioner seeks to exclude all other employees, including all employees covered by another collective bargaining agreement, maintenance, production, sanitation, dock, quality assurance, all other live haul employees, guards, office employees and supervisors as defined in the Act.

Contrary to the Petitioner, the Employer argues that the petitioned-for unit is not appropriate. In addition to the 51 chicken catchers, the Employer argues that the appropriate bargaining unit should include seven forklift drivers/loader operators², nine live haul drivers and two cage repairers.

¹ The original petition lists approximately 45 employees. As evidenced at the hearing, the correct number of employees classified as chicken catchers is 51.

² The terms forklift drivers and loader operators are used interchangeably.

The parties stipulate that there is no history of collective bargaining for the employees in the petitioned-for unit and the Petitioner is willing to represent any unit found appropriate by the Regional Director. Thus, the issue at hand is whether the petitioned-for unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

I. Acting Regional Director's Findings

A hearing officer of the Board held a hearing and the parties filed briefs with me. Having considered the record evidence and the parties' arguments, I conclude that the petitioned-for unit consisting of chicken catchers shares a sufficient community of interest to constitute an appropriate unit and that the forklift drivers/loader operators, live haul drivers, and cage repairers are not required to be included in said unit. Therefore, I find an immediate election should be directed in a unit consisting of approximately 51 employees. The factual basis and analysis for these findings follow below.

II. Statement of Facts

A. Overall Operations: The Employer is a Delaware corporation with offices and places of business in Center and Nacogdoches, Texas where it is engaged in the business of poultry processing. Collectively, the Employer's facilities in Center and Nacogdoches are known as the Center complex. The Center complex is an integrated poultry operation, meaning that the entire process [from egg to final processing of the poultry for the marketplace] is conducted at that complex. The various facilities/operations comprising the Center complex and poultry operation include the plant, live haul operations, service center, waste treatment plant and support facilities (quality control and maintenance) which are physically located in Center, Texas. Also included in

the Center complex are the grow-out³ offices, administrative offices, feed mill, feed delivery offices, and hatchery which are located in Nacogdoches, Texas.

Some poultry operations are conducted at the plant and others outside the plant. Outside the plant are the feed mill which delivers the feed and the grow-out operation which manages the hatcheries and harvesting of the birds. The grow-out includes three basic poultry operations known as the pullets, breeder flocks and broiler operations. A pullet is a hen that provides parent stock for the eggs. Typically, a pullet is raised, under certain conditions, to a proper point at which time it is transferred to breeder flocks where the hen is mixed with roosters to produce fertile eggs. The eggs are then sent to a hatchery for the production of baby chicks. Thereafter, the broiler operations ensue wherein the baby chicks are sent to a contract farm that is owned and operated by a non-employee grower who is responsible for providing the facilities, utilities and care for the chicks. Within a period of approximately 49 to 51 days, the broilers are raised to maturity at which time they are transported, via the live haul operation, to the plant by Employer-operated machinery and employees. Once in the plant, a slaughter process takes place pursuant to USDA and Employer quality control systems. Upon completion of the process, the poultry is case-ready for both inter and intrastate market sale.

At the time of hearing, the plant had the capacity of processing approximately 1.3 million chickens per week and the Employer employed approximately 1400 employees at the Center complex.

B. Live Haul Operations: As evidenced at the hearing, all of the at-issue employees in this proceeding work in the live haul operations. Of the 1400 employees employed by the Employer at the Center Complex, around 80 are employed in the live haul operations.

³ Grow-out is an umbrella term which covers various operations including the hatchery, feed mill operation, feed delivery operation, breeder flock management, pullet flock management, and broiler flock management.

i. Overview: The live haul operations entail transporting harvest age chickens from the independently owned and operated contract farms to the plant for processing. Typically, a grower is notified in advance of a movement schedule. On the day preceding the harvest or catch, a withdrawal system is put in place. On the day of the catch, the grower is responsible for getting equipment off the floor and preparing the house for the chicken catchers. At the designated time, the live haul tractor-trailer trucks roll in with forklifts and cages. Once the catcher crews arrive, the grower turns the chicken houses over to the crew chief. The crews immediately go in and prepare/divide the houses into sections. Next, the forklift operator brings in the cages and the chicken catchers physically catch and load the chickens into the cages. Once full, the cages are brought out and the forklift drivers place the cages on the tractor-trailer trucks which haul the chickens to the plant for processing.

ii. Supervisory Structure: Jerry Robison, live production manager, oversees the entire live production operations including live haul operations. Joe Taylor, live haul manager, reports directly to Robison and is responsible for the overall process of getting the birds from the farm to the plant. Sammy Williams and Charles Metcalf, shift superintendents, report directly to Taylor. Crew chiefs Bruno Cortez, Martin Munoz, Tommy Davis, Raymond Stringer, James Moore, James Hill and Leo McCollister oversee/supervise the chicken catch crews and report directly to Williams and Metcalf. Without exception, Robison, Taylor, Williams, Metcalf, Cortez, Munoz, Davis, Stringer, Moore, Hill and McCollister are salaried employees and considered management/supervisory employees by the Employer. The parties stipulated, and I find, that Robison, Taylor, Williams, Metcalf, Cortez, Munoz, Davis, Stringer, Hill and McCollister are statutory supervisors as defined in the Act because they have at least the authority to effectively recommend discipline or they can authorize time off.

iii. Disputed Employee Classifications: At the time of the hearing, the Employer employed approximately 51 chicken catchers, seven forklift drivers/loader operators, nine live haul drivers and two cage repairers.

Chicken Catchers: The duties of a chicken catcher are essentially to enter the chicken houses, catch the chickens and put them in cages. This is hard and enduring work that involves the employees catching and picking up the chickens by hand up to four in each hand. The chickens can weigh between 6 to 6 ½ pounds and sometimes jump out of the cages and scratch and peck at the chicken catchers. Typically, chicken catchers work in six-man crews and are directly supervised by one of the crew chiefs [Cortez, Munoz, Davis, Stringer, Moore, Hill and McCollister]. The crew chiefs in turn report to the shift superintendents [Metcalf or Williams].

The Employer does not require any prior work experience or qualifications for chicken catchers. Chicken catchers are paid a certain dollar rate per every thousand chickens caught. The rate structures commence with \$2.47 for entry level employees; \$2.61 after 3 months; \$2.76 after 1 year; \$2.78 after 5 years; and \$2.80 after 10 years seniority. The rate is paid by piece of work or according to the total amount caught by the crew not per individual. For example, if a six-man crew catches 40,000 chickens, each member of the crew gets paid their individual rate [based on their seniority level—e.g. \$2.80 for 10 year employee] per thousand based on the 40,000 chickens caught by the entire crew. The goal is to have a six-man crew, but due to absenteeism or personnel shortage, the crews can function as five-man crews or even less. In the event the crew operates with only five, the salary for the sixth position is typically divided among the other five chicken catchers. The record reveals that no other disputed classifications have a similar compensation structure where they get paid according to number of chickens caught by the crew or where the salary for a missing or absent crew member is divided up among the rest of the crew members.

During company provided holidays, chicken catchers get paid a rate of \$8.70 per hour. In addition to their regular compensation, chicken catchers receive an attendance bonus which is not part of the regularly established benefits package and only applicable to chicken catchers. This attendance bonus consists of two levels based on crew and individual attendance. If the entire crew is in attendance all week, the entire crew receives a \$60 per week bonus. If the entire crew is not present, then each individual may still receive a \$10 per day bonus if he is present the entire week. Thus, an individual has the potential of obtaining a \$50 bonus for the week notwithstanding the attendance of the rest of the crew.

The record reflects that the Employer presently has seven chicken catch crews that work in three shifts with varying start and ending times. The first shift (three crews) starts anytime between 12:30 a.m. to 3:30 a.m. and ends anytime between 9:30 a.m. to 12:00 p.m. The second shift (two crews) starts anytime between 8:30 a.m. to 11:00 a.m. and ends anytime between 3:30 p.m. to 6:00 p.m. The third shift (two crews) starts anytime between 12:30 p.m. to 3:30 p.m. and ends anytime between 8:30 p.m. to 11:00 p.m. Shift Superintendent Metcalf oversees the first shift and Williams oversees the third shift. Both have overlapping responsibility for the second shift. The crew chiefs on the second shift are Davis and Martin and the crew chiefs on the third shift are Hill and McCollister. The remaining crew chiefs supervise the first shift.

The chicken catchers primarily work at the farm locations away from the plant. Chicken catchers either report to the live haul operations office located at the plant in Center, Texas or are picked up at their home by a crew chief who then physically transports the chicken catchers in a crew cab vehicle to the farm location. The Employer maintains a time clock in the live haul office/lounge for employees to punch or clock in and out. However, the chicken catchers do not

clock in or out personally. Instead, the crew chiefs utilize a master card which they use to clock in/out all of the chicken catchers on the crew.

The Employer provides a uniform which is worn by the chicken catchers. Once on the farm, the Employer provides water, Gatorade, and a port-a-potty for bathroom breaks. The Employer also furnishes the chicken catchers with pantyhose, talcum powder, masks and a zinc salve. While in the chicken house, the chicken catchers are required to wear a reflective vest due to the low light conditions. After the catch is complete, chicken catchers usually wash up and change into a clean shirt. The chicken catchers do not have a set break time but they do break when trucks get tied up at the plant or when they are moving from house to house.

Depending on the capacity, it may take a six-man crew between two to three hours to catch a chicken house. For a 20,000 chicken house, the time is generally between two to two and one-half hours, and for a 25,000 chicken house the time is about three hours. This roughly equals four truck loads of cages in a 20,000 chicken house and five truck loads of cages in a 25,000 chicken house.

Regarding interchange, the record reveals that at times some chicken catchers, if forklift qualified, will take and operate the forklift. According to Human Resources Manager Powell, however, the reverse is not likely to happen. The record further reveals that chicken catchers Ricky McCollister, Nick Bennett and Phillip Campbel possess forklift licenses and up to two times per shift for 30 minutes to one hour operate the forklift in the absence of the forklift driver/loader operator who has gone to swap out trailers with the live haul driver. However, during the time that they are operating the forklifts, McCollister, Bennett and Campbel are still being paid at the chicken catch rate in that they do not convert over to the daily rate generally received by the forklift drivers/loader operators. The record revealed that employee Marlin Cloudy started off as a chicken catcher and is now classified as a live haul driver. Another employee, Glen Johnson, started off as a

catcher but is now classified as a forklift driver/loader operator. The record reveals no evidence of an employee permanently transferring from forklift driver/loader operator, live haul driver or cage repairer to that of chicken catcher.

Forklift drivers/loader operators: Forklift drivers are responsible for transporting forklifts to the farms. Once on the farm, they take the forklift machines off the truck, check them for oil and water, fill them up with fuel and then remove or set the cages off the trucks. Typically a tractor-trailer truck will carry three forklifts to the farm. When the chicken houses are ready for the catch, the forklift drivers carry the cages into the houses where the chicken catchers begin loading them. After the cages are full, the forklift driver backs the cage out of the house, puts it back on the truck and then brings another empty cage into the house. The forklift driver is responsible for keeping the flow of cages between the forklift and the houses for the chicken catchers so they remain busy. Shift Superintendents Metcalf or Williams directly supervise the forklift drivers. In their absence, the crew chiefs are responsible for or supervise the forklift drivers.

Unlike the chicken catchers, forklift drivers are paid a set daily rate depending on seniority. The rate structures commence with \$108.50 per day for entry level employees; \$115.65 after 3 months; \$120.80 after 1 year; \$121.60 after 5 years; and \$122.40 per day after 10 years seniority. During holidays, forklift drivers receive their same daily rate.

The Employer prefers and appears to require forklift drivers/loader operators to have a commercial driver's license (CDL) at the time of hire because they are responsible for driving the tractor-trailer truck which carries the forklifts to the farm. The Employer prefers some prior forklift experience but does not require it. Once a forklift driver is hired, the employee goes through a forklift safety and driving training class conducted by the safety manager. Depending on the type of forklift they are going to drive, the training may be different (e.g., live haul forklift is bigger so

training is different) but a certain course of instruction must be passed. At the time of the hearing, all of the employees classified as forklift drivers were also licensed to drive tractor-trailers.

Forklift drivers typically work the same shifts as chicken catchers and as live haul drivers. A forklift driver is assigned to each catch crew and generally the same forklift driver will be assigned to the same catch crew daily. Three forklift drivers are assigned to the first shift, two on the second shift and two on the third shift. Forklift drivers report to and clock in/out personally on the time clock in the live haul office.

The Employer provides a uniform, earplugs, safety glasses and a rain suit for use by the forklift drivers/loader operators. When in the chicken houses, the forklift drivers/loader operators are required to wear a reflective suit that is provided by the Employer.

Regarding interchange with the chicken catchers, according to Shift Superintendent Williams, sometimes when it is slow, some forklift drivers get off and help catch, but this only happens occasionally. However, Robert Cooper, chicken catcher, testified that in his ten years of employment he has never seen a circumstance where a forklift driver or live haul driver have helped catch.

Live Haul drivers: Live haul drivers are responsible for transporting empty/full cages back and forth between the processing plant and the chicken farms. Their job entails driving tractor-trailers the distance between farm and plant which may be as much as 60 miles in one direction. The live haul drivers are supervised by the shift superintendents [Metcalf and Williams], but while on the farm, in the absence of the shift superintendent, the crew chiefs supervise them.

Similar to the forklift drivers/loader operators, live haul drivers are paid a set daily rate depending on seniority. The rate structures commence with \$101.20 per day for entry level employees; \$108.40 after 3 months; \$113.60 after 1 year; \$114.40 after 5 years; and \$115.20 per

day after 10 years seniority. During holidays, live haul drivers receive their same daily rate. The Employer provides a uniform, but it is not worn by all live haul drivers.

The Employer requires live haul drivers to have a CDL at the time of hire. Live haul drivers are also required to have some previous driving experience as the Employer does not have a system designed to train a driver. After hire, live haul drivers are given a driving test by the safety manager.

Live haul drivers are assigned to the first, second or third catch shifts and move with the shift. The Employer has five live haul drivers on the first shift and three drivers each on the second and third shifts. Live haul drivers are not assigned a particular catch crew but they are assigned to particular shifts. Live haul drivers clock in and out personally on the time clock located in the live haul office and are subject to Department of Transportation (DOT) regulations. The Employer currently has around four live haul drivers who are qualified and have experience in driving a forklift and there is evidence of daily interchange between them.

Cage Repairers: The typical work for cage repairers includes light maintenance on the cages such as repairing the floors and putting doors on the cages. Cage repairers typically consist of mechanic, welders, maintenance and welder's helpers. The Employer presently employs two cage repairers who are directly supervised by Joe Taylor, live haul manager. If they are out on the farm, the cage repairers are supervised by the shift superintendent [Williams or Metcalf]. Cage repairers do not report to the crew chiefs.

Unlike the other at-issue classifications, cage repairers are paid by the hour depending on seniority. The rate structures commence with \$10.40 per hour for entry level employees; \$11.30 after 3 months; \$12.25 after 1 year; \$12.35 after 5 years; and \$12.45 per hour after 10 years seniority. During holidays, cage repairers receive their same hourly rates.

Cage repairers generally work daylight hours from around 7:00 a.m. to 4:30 p.m. and their general work location is a little shop located behind the service center which is about a block or around 100 yards from the live haul office. Cage repairers personally clock in/out on the time clock located in the live haul office. Although their work is generally performed in the shop, the record reveals that during the summer months, usually from May to August, the cage repairers deliver water and fans to the farm to help keep the chickens cool. One of the cage repairers has a CDL and transports the fans while the other cage repairer follows in a pick-up truck. Most of the time, the fans and equipment are left on the farm that was worked the day before and they will go from farm to farm shuffling or moving the equipment. Williams testified that in addition to the cage repairers, a mechanic also helps in this process.

General Employment Policies/Benefits: The Employer maintains one centralized human resources department headed by Jerry Powell, Center Complex human resources manager. Powell and his staff are responsible for the overall operation of the personnel department including benefits administration, policy enforcement and hiring for the Center complex.

The record reveals that the Employer conducts all of its hiring via the Texas Workforce Commission. The Employer does not accept applications at the Center complex and refers all applicants for any of the at-issue positions [chicken catcher, forklift driver/loader operator, live haul driver, cage repairer] to the Texas Workforce Commission. This procedure is the same regardless of position. Once the application is received and the decision is made to hire, the person is contacted by human resources and set up for an interview by a salaried human resources manager. Once the Employer makes a job offer, the employee is sent for a drug test. If the individual passes the test, then he is set up for orientation which is conducted by the human resources department. During orientation, certain basic topics are covered such as benefits, general harassment, sexual

harassment and ethics training. Because they are subject to DOT requirements, drivers go through an additional orientation process with the safety manager. Drivers are also subject to a more advanced physical as required by DOT and their drivers' licenses are checked to ensure that they possess a current CDL.

All employees in the at-issue classifications are entitled to overtime for time worked over 40 hours per week. Payday is uniform and generally on Fridays. Paychecks are distributed by managers and are picked up at the personnel office. If employees are on vacation or have been off for some reason, they may be able to get their checks on Thursday if available. This is the same for all employees.

All employees are subject to a 90-day or three-month probationary period and all receive the same vacation benefits (depending on seniority) and health insurance including medical, dental and vision. Regarding health insurance, the Employer provides two plans or coverage levels which are individual coverage and family coverage. Individual coverage is required as a condition of employment and employees are automatically enrolled in it. In addition, there is a premium plan and a basic plan with deductibles and copays. All are entitled to workmen's compensation insurance, 401(k) and stock participation plan. All are entitled to short-term disability, life insurance and accidental death insurance. All are subject to the same disciplinary policies, rules of conduct and similarly eligible for peer review or alternate dispute resolution (ADR) for the resolution of individual grievances.⁴ All employees are subject to the same attendance policy, but chicken catchers are entitled to an attendance bonus that is not part of the established benefits package and is only applicable to chicken catchers.

⁴ Notably, a current chicken catcher employee testified that he had never heard of the peer review process or ADR option.

III. ANALYSIS

A. Legal Standard: The Board's procedure for determining an appropriate unit under Section 9(b) is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. *Overnite Transportation Company*, 331 NLRB 662, 663 (2000). The Board will select the unit that is "the smallest appropriate unit encompassing the petitioned-for classifications." *Bartlett Collins Co.*, supra at 484. For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB 152 (2001) (citations omitted). In determining the threshold issue of appropriateness, the Board is guided by the principle that it need endorse only an, not the most, appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950). A Union's desire is relevant, but not dispositive. *Barron Heating & Air Conditioning, Inc.* 343 NLRB No. 58 (2004); *E.H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

B. Petitioned-for Unit is Appropriate: Based on the record evidence and applying the principles cited above, I conclude that the petitioned-for unit comprised of chicken catchers shares a sufficient community of interest to constitute an appropriate unit under Section 9(b).

The Employer argues that the petitioned-for unit is not appropriate because it excludes the forklift drivers/loader operators, live haul drivers and cage repairers. Although the record reveals

some evidence that could support an overall unit consisting of the Employer's live haul operations, I find that such evidence is insufficient to mandate the inclusion of forklift drivers/loader operators, live haul drivers and cage repairers into the petitioned-for unit.

The record reflects that the chicken catchers as a unit are subject to the same wages, hours and working conditions. They are paid a certain dollar rate (depending on seniority) per every thousand chickens caught by the crew. In the absence of a crew member, the salary of the absent member is generally split among the remaining members. Further, chicken catchers receive an attendance bonus based on either their individual attendance or that of the crew. During holidays, the pay structure for these employees changes and they are paid a set hourly rate. On the contrary, forklift drivers/loader operators, live haul drivers and cage repairers are paid a set daily rate or hourly rate, do not receive an attendance bonus and their compensation structure does not change during holidays. The record reflects that no other disputed classification has a similar compensation structure to the chicken catchers where they get paid according to number of chickens caught by the crew; where the salary for a missing or absent crew member is divided up among the rest of the crew members; where they are entitled to an attendance bonus; or where their compensation structure changes for purposes of holidays.

Further, all chicken catchers work in six-man crews under the same work conditions (catching chickens by hand utilizing the same equipment such as talcum powder, zinc salve, masks and panty hose) and same or similar hours depending on their shift. Although the forklift drivers and live haul drivers work similar shifts to the chicken catchers, the cage repairers differ in that they work primarily daylight hours from 7:00 a.m. to 4:00 p.m. The work conditions of the chicken catchers further differ in that they work in crews at the farms, are transported to and from the farms by the crew chiefs and do not clock in or out personally. Forklift drivers and live haul drivers do

perform some of their work at the farms, but they do not work in crews; they do not get transported to the farms by a crew chief; and they personally clock in and out. Cage repairers differ even further as their work is primarily performed in their shop as opposed to farms like the chicken catchers.

Regarding skill and common functions, the evidence established that chicken catchers perform the same job functions (catching chickens by hand). The duties and functions of forklift drivers and live haul operators differ as their jobs entail operating a forklift and/or driving a tractor-trailer to and from the chicken farms. The duties of cage repairers also differs from chicken catchers in that they generally perform maintenance and repairs on the cages. The degree of skill to perform the at-issue jobs also differs as forklift drivers and live haul operators are required to possess a CDL and/or go through various training programs whereas chicken catchers are not. Similarly, drivers are subject DOT regulations and chicken catchers are not. By the nature of their job, cage repairers utilize different mechanical skills which are not utilized by chicken catchers.

The evidence establishes subtle but significant differences in supervision. The chicken catchers have common supervision in that all are directly supervised by a crew chief that also transports them to and from the farms and clocks them in and out utilizing a master time card. Forklift drivers and live haul drivers are supervised by the shift superintendents but in their absence they are supervised by the crew chiefs. Cage repairers are supervised by the live haul manager, but while at the farm they are supervised by the shift superintendents. Cage repairers are not supervised by the crew chiefs.

Regarding contact with other employees, the evidence established substantial contact and interchange between chicken catchers in that they work in six man crews, perform the same job and their overall wages are largely dependent on the production of the crew. Chicken catchers have

some daily contact with forklift drivers in that the work invariably brings them into contact as the forklift drivers take the cages in and out of the chicken houses. Similarly, chicken catchers have some daily contact with the live haul drivers who may have to wait on the farm until the cages are full before they transport them to the plant. However, the record reveals little or no contact between the cage repairers and the chicken catchers. The evidence establishes that three chicken catchers possess a forklift license and operate the forklift during periods when the forklift driver goes to swap out trailers with the live haul driver, but such interchange does not occur in the reverse. The record reveals no evidence of interchange between chicken catchers and live haul drivers or cage repairers. The record reveals the transfer of one employee from chicken catcher to forklift driver and one employee from chicken catcher to live haul driver, but there is no evidence of any such transfer of an employee from any of the disputed classifications into the chicken catcher classification.

In its brief, the Employer accurately notes that all employees in the at-issue classifications are regular, full-time employees who work in the live haul operation. As such there is functional integration in that all are subject to the same overall management/supervisory structure and all are overseen by the same human resources department which utilizes the same general hiring and orientation procedures and all receive similar fringe benefits (medical insurance, dental and vision benefits, 410(k) plan, stock plan, paid vacation and holiday plan). However, as detailed in the facts, the evidence established significant differences in wages, hours and work conditions that weigh against the overall functional integration aspects of the Employer's operations.

In its brief, the Employer cites a Decision and Direction of Election issued in Region 26 (Case No. 26-RC-8482 date September 15, 2005) involving Tyson Foods, Inc. wherein the Regional Director determined a unit of chicken catchers and loader operators to be appropriate. The

Employer fails to mention that the petitioned-for unit in that case included the loader operators and chicken catchers and the employer was seeking to expand the unit to include cage repairers and truck shop employees. After conducting a community of interest analysis, the Regional Director concluded that the cage repairers and the truck shop employees did not share a sufficient community of interest so as to require their inclusion in the unit. Thus, this decision actually supports the findings I make herein. Notably, the Employer fails to cite another Decision and Direction of Election involving Tyson Foods, Inc. (Case 10-RC-15561 dated October 25, 2005) wherein the employer was seeking to expand the petitioned-for unit to include chicken catchers. In that case, the Regional Director of Region 10 determined the petitioned-for unit consisting of live haul drivers, yard hands, coordinators/dispatchers and loader operators was appropriate and excluded chicken catchers.

In summary, based on the evidence and community of interest principles cited above, I conclude that the petitioned-for unit comprised of chicken catchers constitutes an appropriate unit under Section 9(b) and that the forklift drivers/loader operators, live haul drivers and cage repairers do not share such a sufficiently close community of interest so as to mandate their inclusion in the unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulate, and I find, that the Employer, Tyson Foods, Inc., a Delaware Corporation with an office and place of business in Center, Texas, is engaged in the business of

poultry processing. During the past twelve months, a representative period, the Employer purchased and received goods valued in excess of \$50,000 from other enterprises located outside the State of Texas.

3. The parties stipulate, and I find, that the Petitioner claims to represent certain employees of the Employer.

4. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All regular part-time and full-time chicken catchers employed by the Employer at its facility in Center, Texas.

Excluded: All other employees including forklift drivers/loader operators, live haul drivers, cage repairers, employees covered under another collective bargaining agreement, maintenance, production, sanitation, dock, quality assurance, office employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Food and Commercial Workers International Union, CLC, Local 408.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361

(1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before May 31, 2006. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

B. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for

review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on June 7, 2006**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance may also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Dated: May 24, 2006

/s/ Martha Kinard
Martha Kinard, Acting Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102